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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,904	07/25/2003	Martinus C. M. Bakx	D-7870	2416
25572	7590	03/21/2006	EXAMINER	
MEADWESTVACO CORPORATION LAW DEPARTMENT 4850 NORTH CHURCH LANE SUITE D SMYRNA, GA 30080			POLLICOFF, STEVEN B	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/626,904	BAKX ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Steven B. Pollicoff	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 1-5, 9, 11, 12, 14, 16, 18-23 and 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 6-8, 10, 13, 15, 17 and 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/27/03</u>  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Priority***

1. Applicant is reminded that in order to claim for foreign priority based on application number 0102074.2 filed in Great Britain on 1/26/2001 that applicant must update the first paragraph of the specification to reflect that intention and file certified copies of the GB 0102074.2 and PCT/US 0202385 applications as required by 35 U.S.C. 119(b).

### ***Election/Restrictions***

2. Applicant's election without traverse of Species I (Figs. 1-6 and 13), drawn to claims 6-8,10,13,15,17 and 24 in the reply filed on 2/28/06 is acknowledged. Claims 1-5,9,11-12,14,16,18-23 and 25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

### ***Specification***

3. The abstract of the disclosure is objected to because of use of legal phraseology. See line 1 and the word "comprises". Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6-8,10,13,15,17 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what Applicant

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means in claims 6 and 24 when referring to “the minimum distance between the top wall panel and the upper edge of the tab is less than the thickness of the flange.” It is also unclear how the distance causes the tab to pivot with respect to the side wall. For examination purposes the examiner will interpret the phrase as referring to a slit between the top wall panel and the upper edge of the tab.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6-8,10,13,15,17 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Schuster et al., (US Pat No 5,201,412).

With respect to claims 6 and 24, Schuster discloses a carton comprising a top wall panel (Schuster Fig 2 reference number 14), a side wall panel (46) connected to the top wall panel and an article retention structure comprising a tab (trapezoidal structures in between fold lines reference number 58) formed at least in part from the side wall panel, the tab including an upper edge (reference number 52 at c-shaped protrusion) for engaging the underside of the flange and an opposing lower edge (fold line reference number 40 just below the center point of the c-shaped protrusion and perpendicular to reference number 56) defined at least in part by first and second fold lines (reference number 58), wherein the minimum distance between the top wall panel

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and the upper edge of the tab is less than the thickness of the flange to cause the tab to be pivoted with respect to the adjacent side wall panel.

With respect to claim 7, Schuster discloses that the first and second fold lines are mutually divergent towards the upper edge of the tab (Fig 2 reference number 58).

With respect to claim 8, Schuster discloses that the upper edge is substantially aligned with a third fold line (Fig 2 reference number 44) interconnecting the top panel with the side panel.

With respect to claim 10 Schuster discloses that the upper edge is offset from a third fold line (Fig 2 reference number 44) interconnecting the top panel with the side panel.

With respect to claim 13 Schuster discloses that a cut line (column 3, lines 50-52) is provided intermediate the first and second fold lines (reference number 58).

With respect to claim 15, Schuster discloses that a further fold line (Fig 2 reference number 56) extends from the upper edge to one of the first and second fold lines.

With respect to claim 17 Schuster discloses that the top wall panel comprises a portion protruding outwardly of the third fold line (Fig 2 c-shaped protrusion at reference number 52) to protect the article flange.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schuster (US Pat No 5,094, 347) discloses another type of cut line intermediate first and second fold lines of an article retention structure. Harris (US

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Pat No 5,611,431) discloses a carton with a top panel and side panel, a tab and two fold lines.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*SBP*  
SBP 3/16/06

  
JILA M. MOHANDESI  
PRIMARY EXAMINER